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January 19, 2011

David W. Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: *Docket T-101661 – Fuel Surcharge Inquiry*

Dear Secretary Danner:

This letter is in response to the *Notice of Workshop* and invitation to comment regarding consideration of whether to initiate a rulemaking to adopt methods for determining the circumstances under which solid waste collection companies may impose a surcharge for fuel costs, and the methods for calculating any such rate. On behalf of Waste Management of Washington, Inc., the following observations are offered in support of perpetuating the currently-employed methodology for the solid waste industry – with some modifications.

At the outset, the company submits that a methodology of some sort is needed for relief from severe fluctuations in fuel prices. In recent history, this issue has come up before the Commission with some recurring frequency, in recent times including the first Gulf War in 1990, a summer fuel spike in 2000, another seasonal price fluctuation in 2003, and then in 2005 the second Gulf War and Katrina combined to cause a severe fuel price increase for which relief was sought. Whether it is accomplished by rulemaking, by Commission order, or even by agency guidance, the solid waste industry will inevitably need some form of prophylactic means to address uncontrollable and dramatic increases in the price of fuel. To completely abandon the existing mechanisms now seems shortsighted, since the issue will most assuredly return in the future.

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Further, although all regulated transportation industries are vulnerable to unstable fuel prices, Waste Management does not believe that it is necessary to have one methodology for all. The automobile transportation industry apparently has its own needs, and as far as we can tell, the demands coming from that regulated sector are not directly applicable to solid waste – except in the most general sense of having a perceived need for a mechanism to adjust rates for fuel without doing a general rate filing. We urge the Commission to be surgical in its approach, and consider different approaches for different industries.

In general, the methodology that has been utilized for the solid waste industry the past five-plus years seems to have been working fairly well. It involves figuring the percentage of fuel costs of total revenue, and applying a threshold of one percent to determine whether a company is eligible for a fuel supplement. The calculations are somewhat ministerial, and at this point in time we understand that filing for a fuel supplement under the current methodology does not demand a significant commitment of resources by either the regulated industry or by the Commission Staff.

This methodology also insulates the rate-payer from all but the most extreme price fluctuations, and Waste Management supports that policy. Our only problem with the most-recent approach has to do with addressing company-specific costs so that the methodology is applied to each regulated operation in a more even-handed manner. By including revenues from disposal fees and local taxes, the recently-employed methodology treats solid waste companies differently, based solely on their geographic location.

Disposal fees can be as much as forty percent of revenues, and yet they range throughout the state from below \$20 to over \$100 per ton. Even within the Waste Management umbrella of operating divisions, some will qualify for a fuel supplement and some will not – not because of the amount of increase to fuel prices, but because of the local disposal fee component. The same is true to a lesser extent for taxes, which vary enormously throughout the state.

If the Commission were willing to fine-tune the existing methodology, Waste Management reiterates its suggestion that disposal fees and local taxes be backed out of the revenue benchmark used to determine whether a company qualifies for relief or not. If this means the threshold for qualification needs to be something less than the one-percent standard currently used, then changing the percentage would be more appropriate than continuing to include those locally-varying costs. We recall that during the Gulf War Crisis in October of 1990, the Commission allowed a fuel supplement for solid waste companies that subtracted disposal fees from total revenues, along with some of the

higher local taxes (such as Seattle's). Our suggestion for fine-tuning is not without precedent.

We are aware of the argument that excluding disposal fees from revenues is not appropriate, because they are included in the Lurito-Gallagher Curve used for calculating the appropriate rate of return on solid waste companies for rate-making purposes. However, determining whether a company is eligible for a fuel supplement is a completely different question from determining what its rate of return should be. Plus, including disposal fees in setting revenue requirements merely puts a company on a different point of the Curve than it might be if the disposal fees were included. The fact that disposal fees are included in evaluating revenue requirements is not really relevant to the question of whether fuel prices have gone up enough to warrant relief. The company's base tariff rates established by its most recent general rate filing will include disposal fees and taxes, but determining its eligibility for a fuel supplement warrants different treatment of those revenues.

Order 02 in Docket A-042090 which authorized the Executive Secretary of the Commission to permit temporary fuel supplements for the solid waste industry contained no correlation to the time since the company's last filing. Waste Management would support a temporal restriction that ties the company's eligibility for relief from fuel price spikes to its last general rate case. We understand Staff's concern about companies using the fuel supplement process as a surrogate for general rate-setting that side-steps the ability for the Commission to audit expenses and revenues. We support using a five-year cut-off. It seems like a fair, albeit arbitrary, amount of time. If more than five years has passed since its last general rate request, a company would always have the option of petitioning for an exemption from rules to seek permission for making a single-item filing. Also, perhaps using this restriction might somewhat offset Staff's concern about backing out disposal fees from the eligibility determination.

Finally, the *Notice of Workshop* alludes to the potential for treating fuel as a separate component to rates. We wish the record to be clear that Waste Management does not support using a deferred accounting methodology. It is cumbersome and demanding. Waste Management is to our knowledge the only company that has been permitted to utilize such an approach, in a pilot program for our Sno-King operations. *See* Docket TG-061433, Order 01 (November 29, 2006).

When we submitted our subsequent compliance filing for Sno-King three years later, Waste Management had the option of perpetuating the deferred accounting treatment of fuel. It chose not to. During the pilot program, we learned that it caused a great deal of confusion and was challenging to administer. For one thing, Waste Management operates under nine different tariffs, and having just one division utilizing a line-item for

fuel made it difficult for customer service representatives to field questions about rates. Also, because it is deferred, customers had a difficult time understanding the pricing: they could see price fluctuations at the gas pump, but since the fuel item lagged behind the actual prices, the customers were confused.

Administering a deferred accounting methodology would impose resource burdens. If it were adopted for the solid waste industry, to start the process all companies would have to file a general rate request to back out the fuel from its current tariff rates. Commission Staff would be inundated with filings. Then, on an annual basis companies would have to file again, similar to the current handling of the recycling commodity credit/debit except that fuel filings would need to be submitted as general rate filing. We submit that establishing a sharing mechanism would require far more sophisticated measurements of total fuel costs and projections for future fuel prices. It would require a substantial dedication of private and public sector resources to implement.

Furthermore, the Commissioners expressed concern in our Sno-King filing because a deferred accounting methodology removes any direct incentive for the company to manage its fuel expense. At the time, they noted that using a single-issue cost-adjustment is acceptable when the cost at issue is a significant portion of overall costs and the utility's ability to manage the cost is limited, but since fuel costs are less than five percent of total revenues for solid waste collection companies, the incentive to manage costs when a deferred accounting mechanism is available is diminished.

Perhaps the most telling point is that Waste Management had the unique experience of implementing a deferred accounting method for fuel prices through a pilot program, and if we had thought it worked we would not have reverted to normal rate design in our compliance filing.

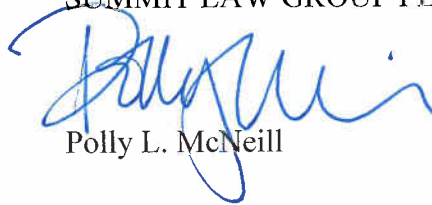
In sum, Waste Management urges the Commission to address industry-specific needs and perpetuate the existing methodology for regulated solid waste collection companies, modified to eliminate disposal fees and local taxes. Even without making the improvements we urge, the company nonetheless supports continuing the existing mechanism for our industry, and rather than abandoning it entirely, we suggest the Commission incorporate a temporal restriction of five years since the company's last general rate filing in the process for determining eligibility for relief. Finally, we do not support using a deferred accounting methodology at all.

David W. Danner
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Thank you for your consideration to this matter. Company representatives will be present at the workshop and available for questions and further consultation.

Sincerely,

SUMMIT LAW GROUP PLLC

A handwritten signature in blue ink, appearing to read "Polly L. McNeill", is written over the typed name.

Polly L. McNeill

cc: David Gomez (WUTC)
Michael Weinstein